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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

In re S.O., a Person Coming
Under the Juvenile Court Law.

2d Juv. No. B292234
(Super. Ct. No. 17JV00115)
(Santa Barbara County)

SANTA BARBARA COUNTY
CHILD WELFARE SERVICES,

Plaintiff and Respondent,

v.

J.T.,

Defendant and Appellant.

J.T. (Mother) appeals an order terminating her parental rights to her son, S.O., and selecting adoption as the permanent plan. (Welf. & Inst. Code, § 366.26.)¹ Mother

¹ Further unspecified statutory references are to the Welfare and Institutions Code.

contends the juvenile court erred when it denied her a contested section 366.26 hearing. We affirm.

FACTS AND PROCEDURAL HISTORY

In February 2017, S.O. was born with syphilis and tested positive for methamphetamine. He was placed in the Neonatal Intensive Care Unit (NICU) for 10 days. Mother visited S.O. once for only five minutes during those 10 days. The nurses observed that Mother was acting “oddly” and was “jittery.” When S.O. was discharged, Mother did not come to the hospital or make arrangements for S.O.’s care. He was taken into protective custody and placed in a foster home.

The Santa Barbara County Child Welfare Services (CWS) filed a petition alleging Mother failed to protect S.O. (§ 300, subd. (b).) The petition alleged Mother did not get treatment after she was diagnosed with syphilis and she used methamphetamine while pregnant. The petition further alleged Mother was kicked out of an inpatient drug treatment program in August 2016. She had since been homeless and living in her truck with friends. Mother also had a criminal history, which included multiple drug offenses and willful cruelty to a child. She was on probation. The juvenile court sustained the allegations in the section 300 petition.

In April 2017, CWS stated in its disposition report that Mother participated in two-hour supervised visits twice a week. There were “no concerns in regard to visitation.” Mother was enrolled in an inpatient treatment program and expressed her intent to reunify with S.O. Based on CWS’s recommendation, the juvenile court ordered reunification services for Mother, including four hours of weekly supervised visits.

Six-month Review

In October 2017, the six-month report stated that Mother completed her drug treatment program and tested clean throughout the program. She was employed as a live-in caregiver.

Mother visited S.O. “regularly and consistently.” Her visits increased from four hours to eight hours per week in June. In July, her visits increased to 12 hours per week and were unsupervised. In September, Mother was granted overnight visitations once a week. Mother and S.O. developed a “healthy mother-son relationship and adjusted well to their increased visitation time and to each other’s routines.”

Mother missed three visits between September and October. Before one of the missed visits, Mother was warned that if she missed a scheduled drug test, her visit would be cancelled. She was also warned her visits could be reduced to four hours a week on a supervised basis if she did not comply with her treatment plan. She missed her drug test, and her visit was cancelled.

The juvenile court adopted CWS’s recommendation and ordered S.O. to remain in out-of-home custody and Mother received additional reunification services.

12-month Review

In April 2018, the 12-month report stated that from October 2017 through January 2018, Mother missed several drug tests and intake appointments. In December, she signed a form admitting that she used drugs. From January to late March 2018, Mother made several attempts to re-enroll in drug treatment programs but each time, she left after only a few days or did not show up to intake appointments. Mother left her job as

a caregiver in January 2018 and began living with friends until she reentered a residential treatment program in late March 2018.

CWS reported that from October 2017 to January 2018, Mother's visits were "infrequent" and her "addiction kept her from prioritizing visits with her child." In November 2017, CWS informed Mother her visitations would be reduced because of her noncompliance with services. Her visits reverted back to being supervised. From November 30 to January 4, Mother missed nine out of 12 visits, and was two hours late to one visit. When Mother did visit, she was "appropriate, nurturing and affectionate."

In an addendum report dated May 3, 2018, CWS noted it suspended Mother's visits from January 4 through April 3, 2018. Mother attended the supervised visits after they resumed. Since late March 2018, Mother has remained in a drug treatment program and maintained her sobriety.

Based on CWS's recommendations, the juvenile court terminated Mother's reunification services and set a section 366.26 hearing.

Section 366.26 Report and Hearing

As of August 2018, Mother had been receiving five hours of supervised visits per month for the past five months. Mother was "attentive" and appropriate" toward S.O. during the visits. S.O.'s foster parents observed S.O. was anxious before these visits and exhibited "tantruming behavior." After the visits, S.O. was "withdrawn" and appeared depressed. The case worker observed that S.O. cries before visits but interacts with Mother during the visits. S.O. appeared "highly attached" to his

foster parents. He had been improving and was “on track” in his development.

Before the section 366.26 hearing, Mother filed an offer of proof to show she met the beneficial parent-child relationship exception to the policy favoring termination of parental rights (§ 366.26, subd. (c)(1)(B)(i)). Mother offered to testify about her sobriety and her treatment progress. She believed that she maintained regular visitations and that S.O. would benefit from a continuing relationship with her. She proffered the testimony of, and submitted letters from, counselors and practitioners who worked with her in treatment programs. They would testify about her progress in the treatment program and one counselor would talk about her observations of Mother’s positive interactions with S.O. and other children. Social workers would testify that during the past five months, Mother was “attentive and appropriate” toward S.O. during visits and that the visits proceeded without incident.

The juvenile court found Mother’s offer of proof insufficient and denied her a contested section 366.26 hearing. The court adopted CWS’s recommendation to terminate Mother’s parental rights and ordered adoption as the permanent plan.

DISCUSSION

Mother contends the juvenile court erred in denying her request for a contested section 366.26 hearing based on her offer of proof. We disagree because her offer of proof was insufficient.

We review a juvenile court’s decision to deny a contested section 366.26 hearing based on an offer of proof for abuse of discretion. (*In re A.B.* (2014) 230 Cal.App.4th 1420, 1434.) We will not reverse the decision unless it exceeds the

bounds of reason or is arbitrary, capricious, or patently absurd. (*In re Stephanie M.* (1994) 7 Cal.4th 295, 318-319.)

Under section 366.26, subdivision (c)(1)(B)(i), if reunification services have been terminated and the child is adoptable, the juvenile court must terminate parental rights unless it “finds a compelling reason for determining that termination would be detrimental to the child” due to a statutory exception. The beneficial parental relationship exception requires the parent to show (1) “regular visitation and contact” and (2) “benefit” to the child from “continuing the relationship.” (*Ibid.*; *In re Angel B.* (2002) 97 Cal.App.4th 454, 466.) A parent who has not reunified with an adoptable child may not derail an adoption merely by showing the child would derive some benefit from continuing a relationship maintained during periods of visitation with the parent, or that the parental relationship may be beneficial to the child only to some degree. (*Ibid.*) The parent bears the burden to establish that “the relationship promotes the well-being of the child to such a degree as to outweigh the well-being the child would gain in a permanent home with new, adoptive parents.” (*In re Autumn H.* (1994) 27 Cal.App.4th 567, 575.) The exception applies only in extraordinary cases, because the permanent plan hearing occurs after the court has repeatedly found the parent is unable to meet the child’s needs. (*In re Jasmine D.* (2000) 78 Cal.App.4th 1339, 1350.)

The juvenile court may request an offer of proof regarding exceptions to the termination of parental rights. (*In re Earl L.* (2004) 121 Cal.App.4th 1050, 1053.) Due process does not require a court to hold a contested hearing if the parent does not proffer “relevant evidence of significant probative value” to the

issue he or she seeks to contest at the hearing. (*In re Tamika T.* (2002) 97 Cal.App.4th 1114, 1122.)

Mother did not proffer relevant evidence of significant probative value. Most of Mother's proffered evidence focused on her progress in treatment and her sobriety, which is not relevant to whether she maintained regular visits and whether S.O. benefited from a relationship with Mother. (§ 366.26, subd. (c)(1)(B)(i).)

Mother argues for the first time on appeal that there was a "discrepancy" regarding whether she maintained regular visitation. She contends that because the beneficial parental relationship exception is considered "in the context of the visitation [Mother was] permitted to have," her testimony could have "cleared up" whether the regularity of her visits were limited by court order. (See *In re Brandon C.* (1999) 71 Cal.App.4th 1530, 1538.) Generally, we do not consider issues that are raised for the first time on appeal, as issues not litigated in the court below are deemed waived. (*In re Christopher B.* (1996) 43 Cal.App.4th 551, 558.) But in any event, there is no discrepancy. The CWS reports show that Mother did not maintain regular visits that were authorized by the court during the dependency proceedings. The 12-month report notes that Mother missed nine out of the 12 scheduled visits. Because of the infrequency of her visits, they were suspended for several months in January.

In any event, Mother's proffered evidence does not show that the benefit S.O. would gain from maintaining a relationship with her would outweigh the benefits of adoption. Mother proffered evidence that caseworkers observed she was "attentive and appropriate" during visitations. But at most, this

evidence only establishes Mother had positive visits with S.O. Frequent and loving contact, pleasant visits, and an emotional bond are not enough to establish the exception. (*In re Derek W.* (1999) 73 Cal.App.4th 823, 827.) The parent must show that he or she occupies a “parental role” in the child’s life. (*Ibid.*) Mother’s proffered evidence does not make this showing.

Mother did not proffer relevant evidence of significant probative value to meet the beneficial parental relationship exception. The juvenile court did not abuse its discretion in denying a contested hearing.

DISPOSITION

The order is affirmed.

NOT TO BE PUBLISHED.

TANGEMAN, J.

We concur:

GILBERT, P. J.

YEGAN, J.

Arthur A. Garcia, Judge

Superior Court County of Santa Barbara

Jack A. Love, under appointment by the Court of
Appeal, for Defendant and Appellant.

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